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December 4, 1996

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment of the Commission's  
Rules to Establish Part 27, the  
Wireless Communications Service ("WCS")  
GN Docket No. 96-228

Dear Mr. Caton:

On behalf of the Fixed Point-to-Point Communications Section and the Private Radio Section of the Telecommunications Industry Association ("TIA"), we are filing an original and fourteen (14) copies of their Comments in the above-referenced proceeding.

If there are any questions, do not hesitate to contact the undersigned.

Respectfully submitted,

FLETCHER, HEALD & HILDRETH, P.L.C.



George Petrutsas  
Counsel for Fixed Point-to-Point  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

IN THE MATTER OF )  
 )  
AMENDMENT OF THE COMMISSION'S RULES ) GN DOCKET No. 96-228  
TO ESTABLISH PART 27, THE WIRELESS )  
COMMUNICATIONS SERVICE ("WCS") )

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION  
FIXED POINT-TO-POINT COMMUNICATIONS  
AND PRIVATE RADIO SECTIONS**

THE FIXED POINT-TO-POINT  
COMMUNICATIONS SECTION,  
NETWORK EQUIPMENT DIVISION  
AND THE PRIVATE RADIO SECTION OF  
THE MOBILE AND PERSONAL  
COMMUNICATIONS DIVISION  
OF THE TELECOMMUNICATIONS  
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DECEMBER 4, 1996

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## EXECUTIVE SUMMARY

In a Notice of Proposed Rule Making ("NPRM"), the Commission has proposed to establish a new Wireless Communications Service ("WCS") in the 2305-2320 and 2345-2360 MHz bands (collectively, the "2.3 GHz band"), and to auction licenses on such frequencies for the provision of "any fixed, mobile, radiolocation services, or satellite Digital Audio Radio Services ('satellite DARS')." By the instant Comments, the Fixed Point-to-Point Communications Section, Network Equipment Division and the Private Radio Section of the Mobile and Personal Communications Division of the Telecommunications Industry Association ("TIA") jointly oppose the Commission's proposal.

For the reasons set forth herein, TIA respectfully submits that the Commission's proposal exceeds the agency's statutory authority and fails to allocate radio spectrum in the public interest, as the Communications Act requires. As conceived, the Commission's proposal is also unworkable, and would have a serious adverse impact on frequency coordination, service implementation, and rational equipment deployment. TIA urges the Commission to abandon its proposal as currently framed and to adopt a frequency allocation plan which conforms with the Comments and Reply Comments to be filed in this proceeding.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	GN Docket No. 96-228
to Establish Part 27, the Wireless	)	
Communications Service ("WCS")	)	

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION  
FIXED POINT-TO-POINT COMMUNICATIONS  
AND PRIVATE RADIO SECTIONS**

In a Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding, released November 12, 1996, the Commission has proposed to establish a new Wireless Communications Service ("WCS") in the 2305-2320 and 2345-2360 MHz bands (collectively, the "2.3 GHz band"), and to auction licenses on such frequencies for the provision of "any fixed, mobile, radiolocation services, or satellite Digital Audio Radio Services ('satellite DARS')." <sup>1</sup> By the instant Comments, the Fixed Point-to-Point Communications Section, Network Equipment Division, and the Private Radio Section of the Mobile and Personal Communications Division of the Telecommunications Industry Association ("TIA") hereby jointly oppose the Commission's proposal.

For the reasons set forth herein, TIA respectfully submits that the Commission's proposal exceeds the agency's statutory authority and fails to allocate radio spectrum in the public interest, as Title III of the Communications Act of 1934, as amended, 47 U.S.C.

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<sup>1</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), FCC 96-441, released November 12, 1996.

§§ 301 et seq., requires. As conceived, the Commission's proposal is also unworkable and would have a serious adverse impact on frequency coordination, service implementation, and rational equipment deployment. TIA urges the Commission to abandon its proposal as currently framed, and to adopt a reasonable service allocation plan based on the suggestions made in the Comments and Reply Comments to be filed in this proceeding.

**I. General**

TIA is the principal industry association representing fixed point-to-point microwave and mobile radio equipment manufacturers. TIA members serve all segments of the U.S. telecommunications industry, including telephone carriers, utilities, railroads, state and local governments, and cellular carriers licensed by the Commission to use private and common carrier bands for provision of important and essential telecommunications services.

The members of TIA are interested in this proceeding because of its potential impact on the deployment of terrestrial fixed and mobile services, and the equipment demands which such services will generate. Spectrum harmonization and standardization are essential to the efficient production of equipment that is to be used throughout the United States or exported abroad.

**II. The Commission's WCS Allocation Proposal Does Not Conform With the Commission's Statutory Mandate**

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**A. The Commission Must Allocate Frequencies in the Public Interest**

The Commission's duty to allocate radio spectrum in a manner which safeguards

the public interest lies at the heart of its statutory mandate. Title III of the Act "charges the Commission with the responsibility of ensuring that the electronic spectrum is used in a manner consistent with the public interest, convenience, and necessity."<sup>2</sup> Pursuant to Section 303 of the Act, Congress has specifically directed the Commission, "as the public convenience, interest or necessity requires," to:

- (a) Classify radio stations;
- (b) Prescribe the nature of service to be rendered by each class of licensed stations and each station within any class;
- (c) Assign bands of frequency to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;
- (d) Determine the location of classes of stations or individual stations;
- (e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;
- (f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act; [and]
- (g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest....

Pursuant to the Act, these functions are exclusive to the Commission and may not be delegated to third parties. Cf. 47 U.S.C. § 155(c) (1996). The Commission, and only

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<sup>2</sup> Becht, "The General Wireless Communications Service: FCC Spectrum Traffic Cop or Broker", 4 *CommLaw Conspectus* 95 (1996) and cases cited therein; 47 U.S.C. §§ 303(a)-(g) and (n) (1996) ; *National Broadcasting Co. v. United States*, 319 U.S. 216 (1943); *Black River Valley Broadcasters, Inc. v. McNinch*, 101 F.2d 235 (D.C. Cir. 1938).

the Commission, may allocate radio spectrum, and it must do so in a manner which promotes the public interest.

In the NPRM, the Commission proposes improperly to delegate its frequency allocation function to interested third parties through the auction process. With some exceptions not here pertinent, the Commission may only delegate by published rule its functions to one or more panels of Commissioners, individual Commissioners, employee boards, or to an employee. The Commission has done so in Part 0 of its Rules, 47 C.F.R. §§ 0.1-0.607 (1995). Yet, the Commission in the NPRM would delegate very substantial functions and basic responsibilities, including those delineated in Sections 303(a)-(f) of the Act, to the third parties which prevail in an auction.

Specifically, under the Commission's plan, successful bidders, rather than the Commission, would allocate spectrum by deciding the purposes for which the spectrum is to be used (fixed, mobile, radiolocation, satellite DARS). The Commission also would improperly delegate to successful bidders the selection of technical standards under which the spectrum is to be used. In short, by its proposal the Commission would not fulfill its responsibilities under the Act and impermissibly delegate to the private sector its statutory responsibilities to determine how a substantial portion of the radio spectrum (the 2.3 GHz band) would be used to further the public interest. Such an arrangement clearly conflicts with one of the paramount objectives of the Act set out in Section 301, which is "to maintain control of the United States over all channels of radio transmission . . . ." 47 U.S.C. § 301.

Under the Commission's proposal, allocation of the 2.3 GHz band among different services will also be determined not by a reasoned public interest determination, as the



law requires, but through competitive bidding. Critical public needs, such as those pressing public safety wireless services and the coordination requirements of adjacent licensees (see below) will remain unmet.

The Commission's plan plainly contravenes the agency's statutory mandate, and abandons over 60 years of administrative process. Since its inception, the Commission consistently has issued licenses only after it has allocated radio spectrum for a specified service, and has based its frequency allocation determination on public interest criteria. The Commission carefully separated its spectrum allocation and licensing functions, ensuring that the latter did not influence the former. This was the case even in the Commission's recent General Wireless Communications Service proceeding, where the agency explicitly held that its "adoption of an allocation to the Fixed and Mobile Services is unrelated to our proposal to auction this allocation."<sup>3</sup>

**B. The Commission's Proposal Constitutes an Impermissible Use of the Auction Process**

The Commission's proposal to transfer its frequency allocation to private parties through the uncertainties of competitive bidding also constitutes an impermissible use of the auction process. Pursuant to Section 309(j) of the Act, 47 U.S.C. § 309(j)(2)(A), Congress has authorized the Commission to hold auctions for the limited purpose of issuing licenses where "the principal use of [the] spectrum [to be auctioned] will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers...." In making a decision pursuant to Section 303(c) of the Act to assign a band of frequencies

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<sup>3</sup> Allocation of Spectrum Below 5 GHz from Federal Government Use, ET Docket No. 94-32, First Report and Order, 10 FCC Rcd 4769, 4794 (1995).

to a use for which licenses or permits will be issued, “the Commission may not base a finding of public interest, convenience and necessity on the expectation of Federal revenues from the use of a system of competitive bidding....” 47 U.S.C. § 309(j)(7).

Through its WCS proposal, the Commission would violate each of these bedrock principles. As noted above, pursuant to the Commission's plan, allocation of the 2.3 GHz band would be a function of the outcome of the auction process, and would not be based on a reasoned analysis of the public interest, as the law requires. The Commission would use its auction machinery not simply to award user licenses, but to determine the allocation of spectrum to specific services, in contravention of the Act.<sup>4</sup>

In this connection it is important to emphasize that the 1997 Appropriations Act, which directs the Commission to “assign the use of [the 2.3 GHz frequencies] by competitive bidding pursuant to section 309(j) of the Communications Act of 1934”<sup>5</sup> does not authorize the allocation of spectrum by auction, as the Commission has proposed. The 1997 Appropriations Act expressly segregates the frequency allocation and license assignment processes and states that the reallocation of the use of frequencies on the 2.3 GHz band must be “consistent with international agreements concerning allocations.”<sup>6</sup> As a prerequisite to making the 2.3 GHz band available for auction, the Commission must “(1)

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<sup>4</sup> The WCS, which the Commission proposes to create, is not so much a new radio service as a hodge-podge of existing ones. The mobile, fixed, radiolocation and satellite DARS services are all currently authorized services under Part 2 of the Commission's rules.

<sup>5</sup> Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996), Section 3001.

<sup>6</sup> Id.

seek to promote the most efficient use of the spectrum; and (2) take into account the needs of the public safety radio services.”<sup>7</sup> Nothing in the 1997 Appropriations Act modifies the provisions of Section 303 of the Act governing frequency allocations, or the provisions of Section 309(j) of the Act governing the use of competitive bidding for licensing. On the contrary, the auction of spectrum in the 2.3 GHz band must occur in a manner consistent with the Act’s requirements.

The Commission's tentative decision to hold auctions, moreover, is legally unsound and based on conjecture. In the NPRM, the Commission has concluded that the principal use of the 2.3 GHz band will involve, or is reasonably likely to involve, a subscription-based service, a legal prerequisite to competitive bidding. Such reasoning, however, is entirely speculative, given the fact that, under the Commission's plan, the actual use of the assigned spectrum will not be known until after the auction process. Some likely uses, such as private microwave systems, public safety, police radar or government vehicle location systems, moreover, are not inherently subject to subscription. The Commission's tentative conclusion that WCS will be, or is likely to be, subscriber-based, is nothing more than a guess, and a far cry from the evidentiary support which the law requires to proceed with an auction.<sup>8</sup>

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<sup>7</sup> Id.

<sup>8</sup> In the General Wireless Communications Service proceeding, involving allocation of the 4660-4685 MHz band, the Commission relied on the same blanket assertion, but at least excluded from its allocation the broadcast, radiolocation and satellite services, which are unlikely to be subscriber-based. Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, Second Report and Order, 11 FCC Rcd 624 (1995). In the instant proceeding, the Commission abandons even this pretense, by proposing to allow virtually any and all

Finally, it would appear that the driving force underlying the Commission's proposal is an impermissible one: to generate Federal revenues by auction. According to recent press reports attached hereto as Appendix A, the planned auction of the 2.3 GHz block on an expedited schedule to conclude September 30, 1997, was designed to help cover the \$6.5 billion cost of White House programs in the FY97 appropriations package negotiated by Congress and the Administration. If true, such an abuse of the Commission's auction process is plainly contrary to the plain language and spirit of Section 309(j)(7) of the Act, and should not be countenanced.

### **III. The Commission's Proposal is Contrary to the Public Interest**

The Commission's proposal to auction off the 2.3 GHz band indiscriminately to mobile, fixed, radiolocation and satellite DARS services also raises substantial public interest concerns. As conceived, the Commission's plan not only contravenes the language of the Act, but is bad public policy. By circumventing its other statutory obligations, as set forth above, the Commission has trivialized or ignored these critical considerations.

#### **A. The Commission Ignores Public Safety Users**

The Commission, for example, pays little more than lip service to the directive of Congress, contained in the 1997 Appropriations Act, to take into account the needs of public safety radio services in its allocation and licensing of the 2.3 GHz band.<sup>9</sup> Citing the

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radio services to utilize the 2.3 GHz band, regardless of whether they are capable of being subscriber-based.

<sup>9</sup> Omnibus Consolidated Appropriations Act, 1997, supra, Section 3001.

recently issued report of the Public Safety Wireless Advisory Committee ("PSWAC Report"), the Commission asks commenters to make specific recommendations regarding how it can design auction and licensing rules that will benefit the public safety community consistent with the Committee's recommendations. NPRM, para. 20. It is impossible to imagine, however, how the needs of the public safety community can be addressed within the context of the Commission's proposal. Public safety interests would be required either to bid for spectrum -- in violation of the statute -- or purchase service or spectrum from successful bidders -- which may also be inconsistent with the Congressional directive. In sum, TIA believes that the public safety needs can not be met within the context of the Commission's proposal.

**B. The Commission Ignores Interference Concerns**

As conceived, it is also clear that the WCS will be plagued with interference problems caused by the operation of mutually incompatible services. Since the invention of radio transmission, the telecommunications industry has recognized the problem of intersystem interference and realized that spectrum can be most efficiently utilized by placing different transmitters on different frequencies. It is also well recognized that certain transmitters cause more interference into service receivers than others. Some of the best known examples of this are radar interference<sup>10</sup> into fixed digital receivers and

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<sup>10</sup> Gawthrop, P.E. and Patrick, G.M, Ground-Based Weather Radar Compatibility with Digital Radio-Relay Microwave Systems, NTIA Report 90-260 (Washington, D.C.: U.S. Department of Commerce, March 1990).

mutual satellite/fixed microwave receiver/transmitter degradations.<sup>11</sup> For these difficult interference cases, the only practical way to allow two or more services to share the same geographical area is to make sure their transmitters (and attendant receivers) are operated at significantly different frequencies. This is the basic concept of frequency allocation by service - the primary motivation for the ITU to adopt Radio Regulations and hold World Radio Conferences. The most efficient utilization of frequency occurs when frequencies are allocated in such a way that only services with similar transmitter and receiver characteristics share the same allocation.<sup>12</sup>

In order to protect operation between adjacent licensed areas, the Commission has proposed the attenuation of emissions outside WCS bands of operation. It is widely acknowledged that mobile operations are incompatible with fixed and radiolocation systems; and certainly, broadcast (and particularly broadcast satellite) operations are utterly incompatible with all of the other primary services unless very carefully coordinated. It is the Commission's responsibility, not the responsibility of third parties, to sort out the

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<sup>11</sup> Alcatel Network Systems, Inc., Petition for Rule Making in ET Docket 92-9, RM-8004, May 1992, pp. 19-24.

<sup>12</sup> As George Kizer, Vice President of Alcatel has noted:

An appropriate segregation of various bands for various users is useful for optimum frequency utilization. It is assumed that various bands will be set aside for similar telecommunications users. This is necessary to allow simplifying assumptions to be made regarding transmit powers, interfering spectrums and receiver susceptibility. It is difficult to coordinate the use of low- and high-power terrestrial microwave equipment in the same band and geographic region.

Kizer, G.M., Microwave Communications (Ames: Iowa State University Press, 1990), p. 113.

compatible from the incompatible uses so that the spectrum can be used effectively in the public interest. The kind of ad hoc operations envisioned by the Commission's proposal would only create major interference problems (co-channel interference in between adjacent areas and adjacent channel interference within a given license area) and open the door to spectrum anarchy.

This intolerable situation would only deteriorate under the Commission's plan to auction off spectrum for competing uses to the highest bidder. Obtaining spectrum bits "a la carte" forecloses network expansion or technological modifications since neighboring frequency blocks either would be used for another service or would be owned by another party. The use of the spectrum allocation method proposed by the Commission could eventually fragment spectrum allocations into smaller, geographically dispersed, and unusable segments. The variety of vastly different services that could end up operating in each band would also complicate international spectrum negotiations and cross border coordination problems by an order of magnitude.

On the subject of cross-border coordination,<sup>13</sup> TIA would like to bring to the attention of the Commission the fact that a new 2290-2360/2520-2590 MHz band<sup>14</sup> has been opened in Canada for low capacity point-to-point or point-to-multipoint microwave systems operating in 1 to 10 MHz of bandwidths.<sup>15</sup> This new band entirely covers the band proposed for multi service auction in this proceeding. It would seem that radiolocation or

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<sup>13</sup> NPRM at paras. 7 and 36.

<sup>14</sup> New Standard Radio System Plan 302.29 of Industry Canada.

<sup>15</sup> See paragraphs 7 and 36 of the NPRM.

satellite DARS use of the band in the U.S. would raise serious bi-lateral issues.

The shortcomings of the Commission's proposed methodology for allocating the 2.3 GHz band are dramatically illustrated by way of a real world example. The concept of frequency allocation by auction is equivalent to allowing all different types of services to share the same frequency band -- a practice followed to a great degree by the Federal Government in its use of spectrum. Over the frequency range of 1 to 30 GHz, commercial (i.e., FCC managed) users and Federal Government (i.e., NTIA managed) users have essentially the same amount of spectrum<sup>16</sup> using similar, and often the same, radio equipment. However, unlike the case with commercial frequency bands, the Government does not always make frequency allocations by user types. Differing types of equipment (e.g., tropo, radar, line of sight microwave) are frequently used within the same frequency band without regard for channelization plans or band allocations. The Government, using the most sophisticated spectrum management techniques available, achieves peak utilization of Government bands on the order of one half to one twentieth of the utilization of comparable commercial bands.<sup>17</sup>

Matheson and Steele, in their report on government spectrum usage, state:

The Government bands seem to have a much lower peak re-use per block, which should be viewed in light of some important differences between Government and commercial services. In general, Government Fixed-Service bands are much less homogeneous than corresponding non-Government bands. The bands identified here as Fixed often are shared

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<sup>16</sup> Matheson, R.J. and Steele, F.K., A Preliminary Look at Spectrum Requirements for the Fixed Services, ITS Staff Study (Boulder, Colo.: U.S. Department of Commerce, May 1993), p. 3.

<sup>17</sup> Matheson, R.J. and Steele, F.K., supra at p. 91.



with sizable numbers of various special-purpose, non-Fixed, high-priority systems. The wide variety of these non-Fixed systems not only require a substantial amount of spectrum, but they also make it more difficult to develop an efficient channelization and sharing strategy for the Fixed system.<sup>18</sup>

Clearly, lack of systematic frequency allocation and planning is wasteful of spectrum, and the plan proposed by the Commission would create the same inefficiencies.

Finally, while there may be some merit to the underlying goals of spectrum flexibility, the Commission's proposal to allow essentially any and all services in the 2.3 GHz band will stifle innovation and slow down the development of new technologies for this band. The open-ended nature of the Commission's allocation will create confusion and uncertainty in the marketplace, particularly for equipment manufacturers. Without any clear guidance as to what type of services will ultimately be provided, it is unlikely that any manufacturer will begin the costly product design and development process for equipment in this band, at least not until it is certain who wins the auction and what service they decide to provide.

As the Commission must know, there must be standardized spectrum allocations, not only nationwide but increasingly worldwide, so that equipment manufacturers can produce, at low cost, standardized equipments for larger markets. The kind of ad hoc operations envisioned by the Commission's proposal would not only create major interference problems but would also require custom designed and consequently very costly equipment. This will have a collateral effect on potential bidders which will have difficulty convincing financial markets that equipment for this band will be available within

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<sup>18</sup>Id. at p. 92.

a reasonable time period after the auction is complete. The failure of the marketplace to respond positively to the allocation of the General Wireless Communications Service in the 4 GHz band is a prime example of how the research and development community is likely to respond to an open-ended allocation in the 2.3 GHz band. The Commission should refrain from making the same mistake here.

#### **IV. Conclusion**

For all the foregoing reasons, TIA respectfully submits that the Commission's proposal should not be adopted. Instead, the Commission should consider one or more allocations of the 30 MHz involved (i.e., the 2305-2320 and 2345-2360 MHz frequencies) in such a manner and for purposes that would best promote the public interest. Instead of the haphazard approach it has proposed, the Commission should focus its allocation of the 2.3 GHz band on a particular set of services, preferably those that would foster the development of new technologies and enhanced services. In this regard, many TIA members see a spectrum need for wireless broadband data and wireless local loop applications, and they urge the Commission to adopt one or more allocations based on the

suggestions contained in the Comments and Reply Comments to be filed in this proceeding. TIA sees little need for additional voice spectrum for CMRS.

Respectfully submitted,

THE FIXED POINT-TO-POINT COMMUNICATIONS SECTION, NETWORK  
EQUIPMENT DIVISION AND THE PRIVATE RADIO SECTION OF THE  
MOBILE AND PERSONAL COMMUNICATIONS DIVISION OF THE  
TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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December 4, 1996  
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# Wireless industry airs suspicions over 2.3 GHz spectrum auction

By Jeffrey Silva

WASHINGTON—The wireless telecommunications industry is leery of a new budget-driven, flexible-use auction proposal that could create more competition for carriers on Main Street and Wall Street.

The auction of the 2305-2320 MHz and 2345-2360 MHz bands has to begin by April 15 and must be completed by Sept. 30, the last day of fiscal 1997.

At the same time, the Federal Communications Commission has shored up rules for auctioning unserved cellular areas at 800 MHz.

The 2.3 GHz spectrum, part of a block originally intended for digital satellite radio service, was freed up to help pay for the \$6.5 billion cost of White House programs in the FY97 appropriations package negotiated by con-

gressional Republicans and the Clinton administration before lawmakers adjourned the 104th session in late September to campaign for reelection.

Even before the 30 megahertz Wireless Communica-



Kitchen

tions Service auction plan was official, the wireless industry voiced skepticism and even outrage about it.

"If there was ever any suspicion as to whether or not

spectrum auctioning was being done solely for the good of the marketplace, this decision certainly sends the message loud and clear. This is about making money," said Jay Kitchen, president of the Personal Communications Industry Association.

Specifically, Kitchen said PCIA opposes national licensing and eligibility restrictions in the form of the 45 megahertz commercial wireless spectrum cap.

"New entrants who have spent time and money to build out their systems nationwide will be hurt; spectrum caps will prevent many players from being able to participate and it would slam the door on small providers," Kitchen stated.

Another concern is that the introduction of more spectrum and carriers into the wireless marketplace will create added demand for fi-

nancing at a time when C-block personal communications services auction winners are still trying to round up money for licenses and system buildout costing hundreds of millions—even billions—of dollars.

Similarly, FCC Commissioner James Quello raised concerns about the potential



Quello

impact of the 2.3 GHz auction on C-block licensees and future D-, E- and F-block auction winners.

"We must ensure to the extent possible that any decisions we make, including the creation of new potentially competitive services not prejudice existing licensees by suggesting that we have somehow predetermined winners and losers by deeming one service or other more deserving of regulatory flexibility or beneficence," said Quello.

C-block PCS licensees tend to be small- and mid-sized firms, due to the fact that auction excluded the Baby Bell local telephone companies and long distance carriers that dominated A- and B-block auctions.

FCC officials describe the early criticism as protectionist fears, the same kind they heard when the agency proposed to auction PCS licenses (encompassing 120 megahertz) to create competition for the cellular duopoly.

Ron Nessen, a spokesman for the Cellular Telecommunications Industry Association, said the new competitive landscape precludes the need to apply the spectrum cap. He added that considering a nationwide license flies in the face of the FCC's previous opposition to such licensing. The FCC is weighing whether or not to count the new spectrum against the cap.

The 45 megahertz-per-market limit, if applied to the 2.3

bidding.

While the proposal would let licensees offer fixed, mobile, relocation and digital satellite radio services and enable them to partition services areas, disaggregate spectrum and franchise (representing a growing trend toward spectrum flexibility), other key auction rules are up for debate.

The FCC is seeking input in December on the size of geographic service areas and the amount of spectrum for each license, buildout requirements and on Congress' call that public safety spectrum needs be taken into account.

As such, the new 2.3 GHz spectrum poses an interesting political dilemma for the FCC. Wireless carriers, fearing new competition, appear willing to hand over the 30 megahertz to public safety.

The FCC, pressured by Congress to pay serious attention to future public spectrum needs, could satisfy commercial and public safety wireless sectors by allotting new frequencies to police, fire fighters, medics and others as recommended by a federal advisory panel.

But that probably won't happen because the FCC owes \$3 billion to the U.S. treasury from the new auction. Therein, lies the problem that is causing growing friction between congressional telecom policymakers and budgeteers in the House, Senate and Office of Management and Budget who came up with the idea for the 2.3 GHz auction.

While telecom policy appears to suggest accommodating public safety with the 30 megahertz, budget policy rules.

The strain between spectrum and budget policymakers is expected to come to a head during spectrum reform debates next year.

Despite the fears voiced by wireless carriers, it's not clear the spectrum would draw more bidders for the crowded pocket telephone field.

In fact, early speculation had MCI Communications Corp. and Microsoft Corp. interested in buying the spectrum for wireless Internet service. While wireless carriers have interest in that market, it is a peripheral business that lacks the threat

## Industry groups encourage the FCC to educate states about tower siting

By Debra Wayne

WASHINGTON—The Personal Communications Industry Association and the Cellular Telecommunications Industry Association have advised the Federal Communications Commission to take a more proactive role with individual states to ensure the success of wireless tower siting on state-owned property.

In comments submitted earlier this month, PCIA noted while the commission has been educating individual states regarding new Telecom Act rules, it also should be the main clearinghouse for information and statutes for local jurisdictions grappling with site contracts.

In addition, the FCC should provide information prior to being asked and before problems arise, the association wrote.

PCIA suggested the following information be provided to those regulators who may need it: all applicable federal statutes and regulations relating to the approval, construction, evaluation or notification of antenna structures or facilities, including Federal Aviation Administration guidelines and environmental caveats; General Services Administration guidelines regarding antenna siting on federal property; Bureau of Land Management and U.S. Forest Service management policies and regulations as they relate to federal property; and FCC information on transmitters, including the type-acceptance process and radiation standards.

sion staffers available to answer any questions or to provide testimony when needed before local zoning boards.

CTIA, while agreeing with PCIA on what types of siting regulations and guidelines should be made available to state and local governments, went one step further in its comments by asking the commission not to float a proposed rulemaking on the matter that might

**A federal agenda or model for cooperative siting efforts should be formulated to make sure states, carriers and consumers are treated fairly.**

discourage "wireless carriers from considering state-owned property as a viable arrangement for siting facilities."

Such a rulemaking would run counter to telecom act rules that require the commission to work with the states on this issue; CTIA also believes a regulation on this could "result in rigid rules or standards which have the ability to freeze technology and innovation."

A federal agenda or model for cooperative siting efforts should be formulated, CTIA added, to make sure states, carriers and consumers are treated fairly. Such a model would guard against excluding private property use when appropriate, unreasonable fees, discriminatory bidding and collocation problems.

According to CTIA, some states "are adopting boilerplate ordinances that extort excessive franchise fees, occupancy taxes, excavation fees, obstruction fees, etc., for the use of public rights of way."

What the FCC needs to monitor is how "fair and reasonable rates" are determined on a competitively neutral and non-discriminatory basis so no real or perceived barriers to entry could be formed at the state or